

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JUDGE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: (Audio begins mid-sentence) conference for
2 case number 21-CV-1540, Wilmington Trust N.A. v. Segal and
3 Segal calls for a telephone status conference for case number
4 23-CV-5945, Hancock Insurance Company v. Wilmington Savings
5 Fund Society FSB, et al.

6 Before I ask the parties to state their appearances, I
7 will state the following. Persons granted remote access to
8 proceedings are reminded of the general prohibitions against
9 recording and rebroadcasting of court proceedings. Violations
10 of these prohibitions may result in sanctions, including
11 removal of court issued media credentials, restricted access to
12 future hearings, denial of future hearings, and any other
13 sanctions deemed necessary by the court.

14 Due to the number of callers, I ask that everyone
15 please state your full name when addressing the Court. That
16 being said, if counsel for the plaintiff, Wilmington Trust N.A.
17 please state your appearance.

18 MR. JESUS CUZA: Good morning, Your Honor, Jesus Cuza
19 on behalf of Wilmington Trust and with me on the other line is
20 Rebecca Canamero.

21 THE CLERK: For the pro se defendant Segal (ph.),
22 please state your full name for the record.

23 MR. HERMAN SEGAL: Herman (ph.) Segal, defendant pro
24 se.

25 THE CLERK: For plaintiff John Hancock Insurance

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1 Company of New York, please state your appearance.

2 MS. JACLYN METZINGER: Good morning, this is Jaclyn
3 Metzinger from Kelley Drye and Warren. And on the other line,
4 I have my colleague Caitlin Hickey.

5 THE CLERK: Counsel for defendant Wilmington Savings,
6 please state your appearance.

7 MR. BRANDON WITKOW: Good morning, this is Brandon
8 Witkow on behalf of Wilmington Savings Fund.

9 THE CLERK: And for defendant, Elliott Brisk (ph.),
10 please state your appearance.

11 MR. SAMUEL KARPEL: Good morning, this is Samuel
12 Karpel from Einhorn Karpel PC on behalf of Elliott Brisk.

13 THE COURT: Okay. Good morning to you all. So as you
14 have seen from the docket, the Court has been presiding over a
15 case with a lower docket number 21-CV-1540, Wilmington Trust
16 N.A. v. Segal for some time now and I have had multiple
17 conferences with Mr. Cuza. The case was headed for default, we
18 then got Mr. Segal's attention in connection with the default
19 motion practice and he has been engaged in the case since that
20 time and appearing at conferences. In the meantime in 2023,
21 second case was filed, John Hancock Life Insurance Company v.
22 Wilmington Savings Fund Society, FSB.

23 And given some of the factual allegations in each
24 case, the Court was concerned that it might make sense for us
25 to try to untangle both of these cases together. So we asked

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1 you all here today to give an overview essentially of where
2 things stand with respect to each case, what is going on in
3 each case and whether or not the parties are of the view that
4 these cases should be deemed related or consolidated for
5 purposes of case management, not necessarily consolidated for
6 disposition, but just want to understand the most efficient way
7 of moving forward, ultimately of course with the goal of trying
8 to resolve them both.

9 So Mr. Cuza and I have had innumerable conferences at
10 this point, but I am -- welcome your thoughts to start sir, as
11 the plaintiff in the oldest filed case as to how we should be
12 approaching both cases and what's going on in the first case,
13 Wilmington Trust v. Segal. So Mr. Cuza starting with you.

14 MR. CUZA: Good morning, Your Honor. Your Honor, as
15 you know and as the record reflects, a partial judgement in our
16 case was entered in late 2022. Since then, in this case, the
17 issue that we have been dealing with has to do with the date of
18 birth of Ms. Segal. During the summer of 2023, we deposed
19 Herman Segal and during that deposition, Your Honor, you might
20 recall that Mr. Segal appeared at his deposition without any
21 documents requested relating to the issue of Ms. Segal's date
22 of birth. Mr. Segal's representation at least one telephone
23 conference with Your Honor, where Mr. Segal, number one
24 admitted that he personally has no knowledge of the date of
25 birth of his mother, and number two is that he believes he had

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1 the right to take and invoke the Fifth Amendment because of
2 having documents relating to the date of birth that would
3 implicate him in the commission of a crime.

4 After that, Your Honor, we conducted discovery, which
5 we informed the Court that we were going to do, number one on
6 John Hancock and second, dependent from that discovery, Your
7 Honor, we conducted our own independent investigation and hired
8 an investigator. As a result of our efforts, Your Honor, we
9 did come across ancient documents signed by Ms. Segal that
10 confirm that her date of birth, is in fact the date of birth
11 reflected in the application for insurance, specifically the
12 year 1926. As a result of the Federal Rules of Evidence, we
13 informed Your Honor in November that we're prepared to file a
14 motion for summary judgment.

15 We have that motion for summary judgment and we have
16 the pre-motion letter drafted. Our intent, Your Honor, is to
17 file the letter today or tomorrow. What we were hoping to
18 cover during today's call with you and Mr. Segal, was consent
19 to you resolving the issue of the motion for summary judgment
20 in light of the fact that we have been working with you for
21 probably two years now. And there's no question, Your Honor,
22 that you're very familiar with the case. So that's where we
23 are, Your Honor.

24 We're not familiar with the other litigation with one
25 exception. My recollection is that late last year, you asked

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1 if these cases were related. Your Honor, and you can go back
2 to the record and look at what it is that we represented, but
3 what I am sure of as of the moment that we received the
4 communication from the Court, we were not aware of that
5 litigation. So Your Honor, I think that covers the background
6 and covers where is it that we are at this particular point in
7 time in this case. We're happy to learn that Hancock's
8 attorney is on this call. So Your Honor, I will stop there and
9 happy to cover whatever else you want me to cover.

10 THE COURT: Thank you, Mr. Cuza. One small point that
11 you did not mention, no critique, was that I had been asking
12 for a year and a half, where's John Hancock. And so I am too,
13 happy that John Hancock is here because I think -- there is
14 some hope in my mind, at least, that now that we have all of
15 the players involved in cases before the Court that have been
16 referred to me for case management purposes, perhaps we have
17 the requisite players now to actually resolve these matters.
18 But I think that a lot remains to be seen in that respect.

19 Mr. Segal, is there anything you'd like to say in
20 terms of your views as to the two cases or any updates you'd
21 like to provide in the first case, Wilmington Trust N.A. v.
22 Segal?

23 MR. SEGAL: Well, I just think that Mr. Cuza perhaps
24 misspoke. He had mentioned that I had said that I had no
25 knowledge of my mother's birthday. And the only sense I have

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1 no knowledge on is that since I was born after my mother, by
2 definition, I can't vouch for her age, but I'm quite certain
3 that I know what her age is, and I can pretty much provide
4 pretty substantial proof as to what it is. That's the only
5 thing I wanted to add.

6 THE COURT: Thank you, Mr. Segel. Mr. Cuza did say
7 personal knowledge of your mom's birthday and that's kind of
8 lawyer shorthand for, as you pointed out, you couldn't possibly
9 know her birthdate --

10 MR. SEGAL: Right.

11 THE COURT: -- as a matter of like witnessing it
12 because you weren't born. So like all things of that nature,
13 we rely on documents, family lore, people write it in their
14 family books.

15 MR. SEGAL: Right.

16 THE COURT: But he did -- I think he did mean that you
17 couldn't personally testify to knowing it, having witnessed it.

18 MR. SEGAL: That's correct.

19 THE COURT: That's how I understood it. So thank you
20 for that clarification, sir.

21 Ms. Metzinger, on behalf of John Hancock, would you
22 like to give me a little bit of an overview with regard to
23 where things stand in the second case? This is the first time
24 we're conferencing your case, so I like to learn a little bit
25 more about the underlying allegations, and I'm curious to hear

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1 your thoughts on the interplay between the two matters.

2 MS. METZINGER: Absolutely, Your Honor. So we filed
3 our interpleader complaint in August of 2023, both of the
4 claimants have answered that complaint. And we wrote to Judge
5 Henry in October because there were a few issues that we wanted
6 to bring to her attention. And really there's two issues in
7 our case. So the first is the date of birth issue that I
8 understand is being litigated in the first case, which, as you
9 noted, we have not been a party to although we have provided
10 some discovery. And the second issue in our case, which
11 necessitated the interpleader filing was who actually has the
12 rights to the benefit on our policy. And so really those are
13 the two main issues in our case, and both of those sort of had
14 an outside influence on how the case was going to move forward,
15 I think, from the perspective of the two claimants, at least.

16 There was a New York Court of Appeals case that had
17 been referred to by the Second Circuit relating to the
18 effectiveness of an assignment of a life insurance policy when
19 the insurance company is not put on notice of the assignment.
20 And so in this case, Mr. Brisk is alleging or has claimed to
21 Hancock that he obtain an assignment of our policy from Mr.
22 Segal, but John Hancock was never put on notice of that
23 assignment. Whereas, second claimant, Wilmington, has an
24 ownership interest on record with John Hancock, these are
25 the -- a couple of different changes of ownership that have



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1 happened over time.

2 And so it's my understanding that the two claimants
3 were waiting for the decision from the New York Court of
4 Appeals to sort of shape their strategies going forward. That
5 decision came down at the end of November and in sum and
6 substance held that an assignee whose assignment has not -- for
7 whom the insurance company has not been put on notice, no
8 longer has -- or doesn't have standing to assert that claim as
9 against the insurance company.

10 So I think after we saw that decision, we anticipated
11 that Mr. Brisk may change his litigation strategy vis-a-vis
12 John Hancock. Certainly Mr. Karpel can advise the Court what
13 he intends to do. But it's our understanding that he continues
14 to maintain his claim against John Hancock and so it's John
15 Hancock's preference to get an order of interpleader, pay the
16 funds into the registry of the Court, and then let Mr. Brisk
17 and Wilmington litigate amongst themselves with respect to who
18 is entitled to the payment of the death benefit.

19 With respect to whether the cases are related or
20 should be consolidated, it's certainly true that there is an
21 overlapping issue regarding the date of birth. They are
22 different policies though and as I said earlier, Hancock has
23 not been a party to the first case, and Mr. Segal is not a
24 party to our case. So there are some differences, but there
25 are certainly some factual and legal overlap.

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1 THE COURT: Well, there's only one date of birth. But
2 with consistent litigation on that question, I do think these
3 cases do need to be evaluated in tandem.

4 All right. On behalf of Mr. Brisk, Mr. Karpel, would
5 you like to start?

6 MR. KARPEL: Yes, yes. So Your Honor, Mr. Brisk was
7 assigned the life insurance policy in 2006 and we understand --
8 or it has become apparent that at some later point, Mr. Segal
9 apparently assigned the policy to another party and then there
10 was subsequent assignments thereafter. And so it was our
11 position and it is still our position that that assignment is
12 still valid. The Brettler v. Allianz case, from our
13 perspective, does not change our position with respect to the
14 validity of the assignment. In that case, it did hold that the
15 assignee could not enforce any contractual rights of the
16 policyholder against the insurer, but we still assert that the
17 actual assignment is valid and our client does not lose any
18 ownership interest or rights to the policy by the fact that it
19 was later assigned.

20 So the Brettler case does not change our position. I
21 think that John Hancock had acknowledged prior to the Brettler
22 case that there is two competing claims with respect to
23 ownership and that's why there was the interpleader action.
24 And so our position hasn't changed because of the Brettler
25 case. But as far as the issue with respect to the date of

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1 birth, that is an issue that appears to be in both cases, the
2 exact same issue. We pointed it out to Magistrate Judge Henry
3 in our letter and in my perspective it would make sense to have
4 our case heard together with the first case because of that
5 main issue.

6 THE COURT: Okay. And on behalf of Wilmington
7 Savings, Mr. Witkow.

8 MR. WITKOW: Yes. Good morning, Your Honor. I too
9 agree on the date of birth issue and what John Hancock is
10 proposing, subject to the details of the stipulation for
11 interpleader is to interplead the undisputed principal balance
12 of the policy, less the amount they want to withhold as a
13 result of the date of birth issue. And so I too agree that the
14 date of birth issue should resolve both of the cases on that
15 issue and if decided in favor that it's 1926, then John Hancock
16 should interplead the remaining funds.

17 Now, with respect to the facts of our case, just so
18 Your Honor understands the time line here, this policy was
19 taken out by Mr. Segal on behalf of his mother in 2006 and
20 apparently immediately assigned into a trust for his mother.
21 Then several years later, Mr. Segal sold the policy to another
22 party and made representations in that sale and purchase
23 agreement that there were no previous assignments and that Mr.
24 Segal was the only beneficiary of the policy.

25 That policy was again then sold two more times and my

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1 client purchased the policy carrying those representations in
2 2013 and has made premium payments on that policy through the
3 date of birth of Ms. Segal. Mr. Brisk's position, he made no
4 payments. His position essentially is he received the
5 assignment shortly after in 2006, essentially made maybe one or
6 two premium payments in 2006 or 2007, has not made premium
7 payments in the ensuing 13 years until her death. And in
8 taking the position that that's a valid assignment and he,
9 therefore, is entitled to the death benefit proceeds.

10 Obviously, my client disagrees, they were the rightful
11 purchaser of the policy, complied with the policy terms, notice
12 was provided to the insurer, which was acknowledged by John
13 Hancock and therefore we believe we're entitled to the full
14 death benefit proceeds. So that's the precise issue between my
15 client and Mr. Brisk, is essentially whether that -- let's call
16 it the hidden assignment, because that's what it's referred to
17 in the Brettler v. Allianz case. That it was assigned without
18 notice to the insurer continues to be a valid assignment under
19 New York law giving Mr. Brisk a contractual right to the death
20 benefit proceeds.

21 So that's the principal issue that remains, whether or
22 not the Brettler v. Allianz case determines that issue, whether
23 a hidden assignment is valid under New York law, I think Mr.
24 Karpel and I disagree as to the effect of that decision on this
25 issue for our case.

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1 THE COURT: But it does sound like a legal issue, do
2 you agree with that, Mr. Witkow?

3 MR. WITKOW: It does have some factual components. I
4 think, obviously, if Mr. Brisk had complied with the other
5 policy terms principally making premium payments to get the
6 benefits of being the policy owner, whether or not he made
7 premium payments is somewhat of a factual determination. But I
8 suppose, it's going to be undisputed because John Hancock will
9 know who they received premium payments from.

10 THE COURT: Right. So I'm just trying to understand
11 where this is all headed, right. So Mr. Cuza indicated that
12 he's basically prepared to, as of today, to file a motion for
13 summary judgement for clarification of Ms. Segal's birth date.

14 Mr. Cuza, to your knowledge, is there any evidence
15 that the Court would need to take in connection with that
16 motion in terms of live testimony or is this really an
17 evaluation of ancient documents as it's really a question as to
18 which there's no fact dispute about the available factual
19 record?

20 MR. CUZA: Your Honor, our motion would be based on
21 the existence of the ancient documents supported by the
22 position taken by Mr. Segal during the deposition, which
23 includes not bringing to the deposition any documents relating
24 to the date of birth based on his representation under oath
25 that he had no documents at the time. So Your Honor, I think

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1 that -- well let me add to that, Your Honor.

2 There's no question, right, there's no question that
3 there's a case that was filed in New Jersey, Mr. Segal's behind
4 that case, where in that case it was represented that the date
5 of birth of Ms. Segal was 1924. There's also no question, Your
6 Honor, that there's a death certificate which was prepared with
7 the information provided by Mr. Segal that also states that the
8 date of birth of Ms. Segal was 1924. Now, Your Honor, with
9 regards to the social security number provided for Ms. Segal
10 was incorrect and not true and the social security number
11 provided was for someone that, at the time, and maybe still
12 today was alive and lives in Florida.

13 Together with that, Your Honor, we have the statements
14 of Mr. Segal, to Your Honor, specifically stating and raising
15 his right to invoke the Fifth Amendment. And at the time, the
16 implication of that statement was that he caused certain
17 documents to be produced referring to the date of birth and
18 those documents referring to the date of birth, which we are
19 assuming based on his statement, he was referring to the 1924
20 year of birth, Your Honor. So the implication is that his
21 representations at the time were simply not true, that's where
22 the Fifth Amendment comes into play.

23 So Your Honor, that is a summary of what our motion is
24 going to cover. Your Honor, there's a little bit more. Your
25 Honor, you might recall that there's certain documents that Mr.

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1 Segal provided to us, where he represented to us that these
2 documents would absolutely prove that a date of birth of his
3 mother is 1926, the date on the policy. What Mr. Segal did,
4 was he redacted the date of birth because what Mr. Segal wanted
5 was for my client to pay Mr. Segal money in order for him to
6 produce the unredacted documents showing that the date of birth
7 was 1926. So that also adds to, Your Honor, facts that clearly
8 demonstrate that the date of birth of Ms. Segal was 1926.

9 One of the ancient documents that we have, Your Honor,
10 is a document that dates back to the 1950s, and it's actually a
11 document filed with the Eastern District of New York. So Your
12 Honor, I gave you kind of a long explanation of what we have
13 right now and what the motion for summary judgement is going to
14 look like. Again, this motion for summary judgement was
15 drafted looking at the facts based on the record that we have
16 in this particular case and the actions of Mr. Segal. So let
17 me stop there, Your Honor, because I believe I answered your
18 question. Maybe I gave you a little bit more than what you
19 were asking for.

20 THE COURT: I was really just trying to understand,
21 Mr. Cuza, was your view as to whether or not your anticipated
22 summary judgement motion was accounting for the possibility
23 that others could come forward to say that the factual record
24 isn't complete in terms of whether or not there may be
25 questions that need to be resolved by trier of fact, consistent

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1 with summary judgement standards.

2 So I'm just trying to understand the sort of outline
3 of it because it appears to me that the date of birth question
4 is an antecedent question to how the parties can proceed in
5 both cases. Mr. Cuza has been negotiating with John Hancock
6 now for a lengthy period of time and John Hancock is
7 understandably concerned about giving the full benefit if the
8 date of birth on the initial life insurance application was
9 fraudulent. But they also haven't been participating in the
10 first case, which is what led me to ask Mr. Cuza many many
11 months ago, if not two years ago, where is John Hancock, do we
12 need them here to be representing their position in light of
13 the challenges we faced in locating Mr. Segal initially. Mr.
14 Segal was not participating either. And whether or not there
15 is an actual live factual dispute about her birthdate.

16 I mean, birthdates are the kind of thing that usually
17 can be ascertained with a reasonable degree of certainty, but
18 the farther back someone is born, of course, the more difficult
19 it becomes. And when fraud is suspected, it becomes of course,
20 even more difficult. So it seems to me that it would benefit
21 both cases to have a determination as to the date of birth. It
22 would perhaps move the negotiations forward with John Hancock
23 in case number one to have clarification as to the date of
24 birth. And as to the second case, correct me if I'm wrong Ms.
25 Metzinger, but it seems as though the amount of interpleader

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1 deposit will vary depending upon this question.

2 Can you shed some light on that?

3 MS. METZINGER: Yes. That's right, Your Honor. I
4 believe the discrepancy -- I actually don't know what the
5 discrepancy is in the first case. But --

6 THE COURT: A couple million dollars.

7 MS. METZINGER: Okay. So it's a smaller discrepancy
8 in the policy at issue in case number two certainly, but there
9 is a difference, both with respect to the principal of the face
10 amount of the policy and with respect to the interest that has
11 accrued on that difference. So I tend to agree with you, Your
12 Honor, that it makes sense for these to be determined at the
13 same time. But John Hancock has no knowledge of these ancient
14 documents that Mr. Cuza is referring to. We obviously haven't
15 been participating in any of the discovery in the first case
16 and there are some other medical records in the subpoena
17 production that we provided to Holland and Knight, that shows
18 both dates. We have some medical records that show a 1926
19 birthdate and some records that show a 1924 birthdate. So we
20 would certainly want to be able to participate in any
21 proceeding that would determine that issue.

22 THE COURT: Okay.

23 MR. CUZA: Your Honor?

24 THE COURT: I'm sorry. Is that you, Mr. Cuza?

25 MR. CUZA: Yes, Your Honor. Your Honor, I was going

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1 to add we absolutely welcome, Your Honor, the consolidation of
2 the cases because we do agree, right, that Hancock clearly is a
3 very important party. And resolving this issue, this is going
4 to benefit both cases, which it clearly absolutely will, Your
5 Honor, it does make sense to consolidate both cases and address
6 both cases on this particular issue together.

7 THE COURT: Okay. So my suggestion at this
8 juncture -- I mean, this is obviously just a very unusual
9 posture to have two kind of related cases that aren't fully
10 overlapping where one is -- John Hancock's goal is to like -- I
11 think of these interpleader cases as like, deposit the money
12 and run is kind of my shorthand view of how a lot of these
13 interpleader cases feel. But in this instance, Ms. Metzinger,
14 I do think that John Hancock, obviously, has an interest in
15 potentially participating, as you indicated with regards to
16 some of these initial questions. What would you like to do,
17 Ms. Metzinger? What makes sense to you?

18 MS. METZINGER: I mean, I think that at the very
19 least, I think that any discovery in the first case that
20 pertains to this issue would have to be shared. Certainly I
21 would like to see it, I presume the --

22 THE COURT: Mr. Cuza has been showing it to John
23 Hancock for a long time, haven't you, Mr. Cuza?

24 MR. CUZA: Yes, Your Honor.

25 THE COURT: So that's part of the issue, Ms.

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1 Metzinger, John Hancock isn't listening to Mr. Cuza. Not you
2 personally, obviously, but he has been trying to get John
3 Hancock to recognize these ancient documents for months, which
4 is what's led us to this point in terms of him seeking a
5 summary judgement determination. So perhaps the first step is
6 for the parties here to discuss it and meet and confer. I
7 don't know, Ms. Metzinger, if there's different sort of
8 divisions or departments or lawyers involved with regard to the
9 two cases. But John Hancock is not necessarily acting with
10 full information across the cases, if that makes sense to you,
11 Ms. Metzinger.

12 MS. METZINGER: Your Honor, if there have been
13 conversations with my client between Mr. Cuza and my client in
14 the last few months, I am not aware of them. When I first got
15 retained in connection with the subpoena that was served on the
16 company, Mr. Cuza represented to me that he would be willing to
17 share these documents with me, and I have never received them
18 from him.

19 THE COURT: Mr. Cuza, who have you been interacting
20 with? It's the policy group or somebody else?

21 MR. CUZA: Your Honor, we have been interacting with
22 in house counsel. But Your Honor -- and certainly the
23 information, the documents that were shared with John Hancock
24 it's by letter, right, they're emails -- it's all written. We
25 don't have a problem, by the way, Your Honor, sharing with

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1 counsel the information that we have, at all. So having a meet
2 and confer, Your Honor, we welcome that. Consolidating both
3 cases, Your Honor, we welcome that. Because the reality is we
4 absolutely need to do whatever it is that we need to do to
5 bring this issue to closure, and John Hancock is not only an
6 important party, Your Honor, but as you suggested in the past,
7 it really has become an indispensable party.

8 THE COURT: Yeah. So I mean just so you know, Ms.
9 Metzinger, I have floated the idea and in fact put it in an
10 order in a 1540 case that the Court was contemplating adding
11 John Hancock myself as a necessary party because we could not
12 get forward movement on sort of a determination about what they
13 were going to do vis-a-vis the policy.

14 Another thing that I just want to throw out there for
15 all parties to consider as you try to map out some kind of next
16 steps, is what actually makes sense, right. I completely
17 understand the conflicting nature of the interpleader action,
18 and I don't expect that the parties are going to be able to
19 resolve that without some motion practice because of this
20 intervening Court of Appeals case and questions about the
21 validity of these assignments. So that's a separate issue,
22 right.

23 But with regard to this date of birth question, it
24 seems to me that it's pretty straightforward. And it also
25 seems to me that this is the kind of thing that lawyers who are

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1 being completely honest with themselves in terms of how their
2 motions are going to fly with the Court, should be able to work
3 it out. The documents are either authentic or they're not and
4 either they're going to come in under the rules of evidence or
5 they're not. And they're going to have certain probative value
6 and some of them are going to be higher in probative value than
7 others.

8 And the Court is also not unaware of the history of
9 the frauds at issue here. Mr. Segal's prior history with that
10 has been illustrated in various cases in the past. And all of
11 that would be taken into consideration in evaluating the
12 strength of these ancient documents. The lawyers should be
13 able to do this work and you may be able to save yourselves a
14 lot of motion practice if you have a real honest meet and
15 confer amongst the relevant and interested lawyers and really
16 think hard about which battles are worth fighting and which
17 aren't. Because I would hate to see -- and Mr. Cuza and I have
18 discussed at lengths, this just spiral into massive litigation
19 or a trial when it's a really clear question. And the parties
20 should be able to work it out now that everybody is here with
21 an attorney.

22 So in terms of those comments, various things have
23 been suggested. Mr. Cuza can file for summary judgement,
24 parties can weigh in on it, it's certainly -- you're right, Mr.
25 Cuza to file such a motion. My question is whether we need to

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1 do that first or whether the parties would like an opportunity,
2 thirty days, two weeks, I don't know what's reasonable given
3 the number of schedules to line up for a meeting -- to have a
4 conversation where you candidly review the documents, hash it
5 out with regard to how this litigation would shake out, and
6 each try to go back to their client and make a recommendation
7 and see if we can resolve all this.

8 Let John Hancock deposit whatever amount is the
9 appropriate amount to deposit and then the parties in the
10 second -- John Hancock perhaps, depending on whether they think
11 the 1926 documents are sufficiently weighty and probative, can
12 pay the remainder of the balance in the first case. If not, we
13 will need to go to motion practice and I recognize that, but
14 perhaps that can be the resolution in case one. And as to case
15 two, you can make a determination about how much money to
16 deposit and then John Hancock can be done and the Court can
17 take it from there with regard to case number two. But I would
18 hate to see the parties spin their wheels on mountains of
19 motions if that's not necessary.

20 So what is your reaction to all those comments, Ms.
21 Metzinger?

22 MS. METZINGER: I'm happy to engage in that kind of
23 meet and confer, Your Honor, I think it makes sense. But I do
24 want to clarify, just for my own understanding, if Mr. Cuza has
25 been communicating with in house counsel after we were retained

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1 in connection with this dispute, because as I said, I am not
2 aware of any such communications after my firm was retained.

3 And I understand that there were communications before --

4 THE COURT: He did not know about your case until I
5 told him about it, let's be clear.

6 MR. CUZA: But Your Honor, let me add to that. We
7 haven't communicated with in house counsel since we began to
8 communicate with outside counsel. So Your Honor, all of our
9 communications with in house counsel pre-date the date that
10 counsel became involved. So I think that can clarify the
11 question posed.

12 THE COURT: Go ahead, Ms. Metzinger.

13 MS. METZINGER: Okay. I just didn't want the record
14 to reflect that there had been any recalcitrance on my part or
15 my client in that regard. It has been, I think six months
16 since the subpoena was served on my client and I had initial
17 conversations with Mr. Cuza about the subpoena. And so I just
18 didn't want Your Honor to have the impression that we had been
19 sitting on our hands or delaying this in any way. As I
20 mentioned --

21 THE COURT: I'm not in any way attributing John
22 Hancock's reluctance to pay the two million in Mr. Cuza's case
23 to you. I think it's them, so don't take it the wrong way.

24 MS. METZINGER: Well, I think they're in a tough spot,
25 right, because they have governmental documents and medical

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1 records that show one date and then there are these ancient
2 documents that show another date. But as I said --

3 THE COURT: Well, medical records are not necessarily
4 admissible to prove this point. The only thing that's
5 admissible in medical records are for purposes of treatment,
6 probably your difference in age is arguably not relevant to
7 treatment at all.

8 MS. METZINGER: Sure. All I'm saying, Your Honor, is
9 that there is a discrepancy among all the documents, at least
10 that I have seen.

11 THE COURT: For sure. That's why the parties need to
12 sit down and really evaluate what exists and what the relevancy
13 of those documents are and tease out how a court is likely to
14 review it. I mean, if -- that's why I was asking Mr. Cuza if
15 this was the kind of thing where we need to have a hearing. If
16 there's nobody alive who can say I was present on the date of
17 Ms. Berger --

18 What's her maiden name, is that correct, Mr. Cuza?

19 MR. CUZA: I'm sorry, your Honor, I didn't hear the
20 last part.

21 THE COURT: What was her maiden name, Berger?

22 MR. SEGAL: Berkowitz.

23 THE COURT: Berkowitz. Unless somebody is alive who
24 can say they were present for her birth, the documents are all
25 we have, right. And the fact that there are discrepancies in

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1 documents doesn't mean that those documents have evidentiary
2 value and that's what I want the parties to really think hard
3 about. Looking at the medical records, for example, medical
4 records don't prove even who the person is being treated, they
5 aren't even admissible to prove identity. The only reason
6 medical records are deemed reliable is because who are injured
7 or sick generally tell the doctor what's wrong with them
8 truthfully. That's the only piece of medical records that are
9 reliable under the Federal Rules of Evidence.

10 I don't know what other documents exist that have
11 inconsistencies but think about the underpinning for the
12 relevancy in every single hearsay exception that may attend to
13 these records. And think hard about whether the records you
14 point to for discrepancies matter with regard to the date of
15 birth, because that's what the Court's going to do. And I
16 encourage the parties to do it first to save yourself the work
17 if you can reach an agreement. If John Hancock absolutely
18 doesn't want to do this and they want to file the motions,
19 that's what we're here for, but it just seems like an utter
20 waste of time if the parties can figure it out on their own.

21 That's why I've been encouraging Mr. Cuza to try to
22 resolve it with John Hancock from the get-go because that's
23 really his goal in case number one. His goal is not so much
24 about suing Mr. Segal, who not that long ago was in bankruptcy.
25 His goal is to get the life insurance proceeds for his clients.



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1 And that's what I've been trying to facilitate is if that's the
2 appropriate outcome and in fact it's the most efficient, least
3 litigious way possible. And I'd like to do the same for both
4 cases.

5 So I encourage you to look at the documents, actually
6 study the Federal Rule of Evidence that could apply to it,
7 think about the rationale underlying the hearsay exception and
8 decide if this document has weight because it might not. How
9 long would the parties like to do that?

10 Mr. Cuza, what's your vote?

11 MR. CUZA: Your Honor, we can move quickly, so two
12 weeks is more than enough if the parties want a month, we're
13 happy to do that, but no longer than a month, Your Honor.

14 THE COURT: Okay. Mr. Segal, do you have a vote or a
15 view of how long the parties will need for this process? I
16 don't know if you plan to participate, sir.

17 MR. SEGAL: I imagine I will, yes, two weeks to a
18 month sounds fair to me.

19 THE COURT: Ms. Metzinger?

20 MS. METZINGER: Ordinarily I would say that that time
21 frame sounds perfectly reasonable, Your Honor. My colleague
22 and I are both preparing for an eight-week jury trial that's
23 scheduled to start on February 6th, so the next 30 days for me
24 are quite booked. But I'm happy to prioritize this and get to
25 it as soon as I possibly can.

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1 THE COURT: Well, eight-week trial starting February
2 6th, puts us in mid-March and that's just not reasonable, Ms.
3 Metzinger. You can't spend a couple hours on this in the next
4 couple of weeks?

5 MS. METZINGER: I certainly can, Your Honor. As I
6 said, I have not even seen these documents, but as soon as I
7 get them, I will prioritize my review of them and start
8 engaging in discussions with Mr. Cuza.

9 THE COURT: What's the volume we're talking about, Mr.
10 Cuza?

11 MR. CUZA: Your Honor, they're six, seven documents at
12 the most. So these are documents that can be reviewed in 20
13 minutes.

14 THE COURT: Okay. All right. And the Rules of
15 Evidence go quickly as well. They're my favorite by the way,
16 the Rules of Evidence.

17 Okay. Mr. Witkow, how long do you think this is going
18 to take?

19 MR. WITKOW: You're referring to the date of birth
20 issue or the underlying factual issues in our case?

21 THE COURT: The meet and confer to try to see if the
22 parties can reach any sort of understanding of the date of
23 birth and plan our litigation accordingly. This is about
24 meeting and conferring.

25 MR. WITKOW: Got it. We are deferring -- my position

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1 on behalf of Wilmington is we will abide by the Court's
2 decision or a resolution between Mr. Cuza and Ms. Metzinger on
3 the date of birth issue.

4 THE COURT: Okay. Mr. Brisk, do you want to
5 participate -- I'm sorry, Mr. Karpel, do you want to
6 participate on behalf of defendant Brisk?

7 MR. KARPEL: No, I agree with Mr. Witkow that I can
8 stand in the sidelines and the determination that is made by
9 the other parties we'll abide by.

10 THE COURT: Okay. So I respect the trial, I
11 understand trial prep can be all-consuming. At the same time,
12 both of these cases have been pending for a lengthy period.
13 We're talking about a relatively small volume of documents. I
14 think that they're also quite reasonably organized. I wouldn't
15 be surprised if Mr. Cuza can send them to you within twenty
16 minutes of this call, based on my observations of Mr. Cuza over
17 the last two years. So could the parties please provide me
18 with a status report update by February 2nd to just give me a
19 sense of where we're headed.

20 If at that time, Mr. Cuza, you have determined you
21 need to file your summary judgment motion, by all means, I
22 understand that you can file your pre-motion conference letter
23 in accordance with Judge Chen's individual rule. If the
24 parties in the 1540 case have determined to consent to my
25 jurisdiction with regard to disposition of the motion, you can

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1 discuss that with Mr. Segal and file the appropriate form. I
2 think it's an AO form 85A or something like that. You can
3 Google it, there's like a consent to disposition on the motion
4 and there's also consent to full jurisdiction, whichever one
5 you prefer if you guys agree you can file it on the docket. No
6 pressure to do so, but it is your option.

7 So can all of that be filed by February 2nd, Mr. Cuza,
8 starting with you?

9 MR. CUZA: Yes, Your Honor. And we will send the
10 email shortly after this call.

11 THE COURT: Okay. Mr. Segal, that work for you to be
12 participating in the next couple weeks so that the lawyers can
13 file any appropriate documents by February 2nd?

14 MR. SEGAL: The only thing is if I could have Ms.
15 Swifinger's (sic) contact information, that would be helpful.

16 THE COURT: Ms. Metzinger's contact information?

17 MR. SEGAL: Yes, that's right, I'm sorry.

18 THE COURT: Okay, the phone cut off a little bit, I
19 just wanted to make sure I was hearing you.

20 MR. SEGAL: Yes, Ms. Metzinger, yes.

21 THE COURT: Okay. So Ms. Metzinger, please stay on
22 the line after the call to exchange information with Mr. Segal.

23 MS. METZINGER: Sure.

24 THE COURT: February 2nd date work for you, Ms.
25 Metzinger?

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1 MS. METZINGER: It does, Your Honor. And also I would
2 ask, Mr. Cuza, if you could send us a courtesy copy of whatever
3 pre-motion letter you file with the Court, that would be
4 greatly appreciated.

5 MR. CUZA: Sure. But we're not going to file it until
6 after we have the meet and confer, but --

7 MS. METZINGER: Okay, okay. I understand.

8 THE COURT: Okay. And Mr. Witkow and Mr. Karpel,
9 based upon the prior representations with regard to your
10 anticipated approach in handling this issue, unless you voice
11 an objection, I take it that that February 2nd date is fine
12 with you.

13 Is that correct, Mr. Witkow?

14 MR. WITKOW: That is correct, your Honor.

15 THE COURT: Mr. Karpel?

16 MR. KARPEL: Yes, Your Honor.

17 THE COURT: Okay. So here's my parting suggestion.
18 Everyone just keep an open mind, be reasonable, look hard at
19 these documents, think about how they're going to be received
20 by the Court and act accordingly. Don't pick battles you can't
21 win, it's a waste of everybody's time, especially yours and
22 it's a waste of your client's money.

23 So with that, I look forward to getting your status
24 report update by February 2nd if we need to decide the issue,
25 we obviously will, but I really do think this is the kind of

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1 thing the parties should really try to work out now that
2 everybody's here. So I want to thank you all for your careful
3 patience today, it was very helpful in understanding the
4 interplay of the two cases. Hopefully with some clarity on the
5 date of birth, we'll be able to figure out how to move each
6 case forward.

7 With that, is there anything else we should try to
8 address today? Mr. Cuza?

9 MR. CUZA: No, Your Honor.

10 THE COURT: Mr. Segal?

11 MR. SEGAL: It's just that my pleading the Fifth is
12 not necessarily as Mr. Cuza stated. It could be the other way
13 that her actual date of birth is 1924, and the hesitation was
14 because on the insurance application with John Hancock I had
15 put down 1926, so that was my reason for claiming the Fifth.
16 And that's neither here nor there, so that's it.

17 THE COURT: All right, Mr. Segal, thank you.

18 Ms. Metzinger?

19 MS. METZINGER: Nothing further from me, Your Honor,
20 thank you.

21 THE COURT: Mr. Witkow?

22 MR. WITKOW: No, Your Honor, nothing else.

23 THE COURT: Mr. Karpel?

24 MR. KARPEL: I have nothing further Your Honor, thank
25 you.

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1 THE COURT: All right. Take care and I hope that you
2 both -- I hope all of you stay healthy and well and I look
3 forward to hearing about your progress by February 2nd. Take
4 care, bye bye.

5 (Proceedings concluded)

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1 C E R T I F I C A T I O N
2

3 I, Khaleelah Gantt, court-approved transcriber, do
4 hereby certify the foregoing is a true and correct transcript
5 from the official electronic sound recording of the proceedings
6 in the above-entitled matter.

7
8 *Khaleelah Gantt*
9

January 18, 2024

10 _____
11 Khaleelah Gantt, CDLT-285

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